IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENE C. BENCKINI,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
THE HONORABLE WILLIAM E. FORD and	:	
MATTHEW D. WEINTRAUB,	:	**No. 05-1417**
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J. **June 16, 2005**

Pro se Plaintiff Gene Benckini brings this lawsuit against The Honorable William E. Ford ("Judge Ford"), a judge of the Lehigh County Court of Common Pleas, and Matthew Weintraub, Chief Deputy District Attorney in the Lehigh County District Attorney's Office. The Complaint alleges civil rights violations under 42 U.S.C. § 1983 and a wrongful death claim arising under state law. Presently before the Court are Defendants' motions to dismiss. For the following reasons, the motions are granted.

I. BACKGROUND

For purposes of these motions only, the following facts are taken as true and viewed in a light most favorable to Plaintiff. On October 15, 2001, Benckini was charged with aggravated assault, simple assault, two counts of stalking, and reckless endangerment. (Def. Weintraub's Br. in Supp. of Mot. to Dismiss at 1.) Beginning on or about July 12, 2002, Defendants entered into a conspiracy to deprive Benckini of a fair and honest jury trial. (Compl. ¶ 1.) Judge Ford made various rulings counter to Benckini's interests while Weintraub withheld evidence and suborned perjury. For example, Judge Ford wrongly permitted the jury to hear evidence of a 2000 harassment conviction

and allowed Weintraub to present "secret closing arguments without the presents [*sic*] of defense counsel or the plaintiff." (*Id*. ¶¶ 2, 5.) Weintraub withheld police reports and witness statements that would have exonerated Benckini and also presented a key witness who lied on the stand. (*Id*. ¶¶ 3, 6.)

Benckini was acquitted of the assault charges, but convicted of stalking and recklessly endangering another person. (Def. Weintraub's Br. in Supp. of Mot. to Dismiss at 2.) Judge Ford imposed a suspended sentence and placed Benckini on probation for three years, with a special condition that he be electronically monitored while under house arrest. (*Id*.) On September 9, 2002, Judge Ford sentenced Benckini to eleven and a half to twenty-three months in prison, a sentence that Benckini subsequently appealed. (Compl. ¶ 7.) On January 13, 2003, Benckini was arrested for violating the terms of his probation and was sent to Lehigh County Prison. (*Id*. ¶ 8.) At his probation violation hearing, Judge Ford and Weintraub entered into another conspiracy, manifested by Weintraub's decision to elicit false testimony from Benckini's ex-girlfriend and Judge Ford's refusal to allow Benckini the opportunity to question that witness. (*Id*. ¶¶ 8-9.) Judge Ford also denied Benckini's request for work release, which led Benckini to lose his nursery and landscaping business. (*Id*. ¶ 10.) Finally, this conspiracy forced Benckini's ninety-year old mother from Benckini's home, and she subsequently "died of a broken heart, because she and the plaintiff were very close." (*Id*.)

On March 25, 2005, Benckini instituted this action, seeking to recover $5.5 million. Both Defendants have brought motions to dismiss. To date, Benckini has not responded to either motion. Nonetheless, the Court held oral argument on the motions on June 15, 2005, in an effort to provide Benckini with an opportunity to present his case.

II. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim upon which relief may granted, a court must accept as true all of the factual allegations in the complaint and all reasonable inferences that can be drawn from those allegations. *Morse v. Lower Merion Sch. Dist.*, 131 F.3d 902, 906 (3d Cir. 1997). Moreover, a court must view all factual allegations in the light most favorable to the plaintiff. *Id*. A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Because Benckini is acting pro se, the Court must liberally construe his complaint and "apply the applicable law, irrespective of whether [he] has mentioned it by name." *Seville v. Martinez*, Civ. A. No. 04-5767, 2005 WL 289906, at *2 (E.D. Pa. Feb. 4, 2005) (*quoting Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002)). A pro se complaint may be dismissed for failure to state a claim only if it appears "'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*quoting Conley*, 355 U.S. at 45-46); *Milhouse v. Carlson*, 652 F.2d 371, 373 (3d Cir. 1981). If the plaintiff presents only vague and conclusory allegations, however, the complaint should be dismissed. *Riley v. Jeffes*, 777 F.2d 143, 148 (3d Cir. 1985).

III. DISCUSSION

A. The § 1983 Claims

1. Chief Deputy District Attorney Weintraub

Weintraub advances three arguments. First, Weintraub asserts that he is entitled to absolute

prosecutorial immunity for his conduct related to Benckini's prosecution. (Def. Weintraub's Br. in Supp. of Mot. to Dismiss at 4.) Second, Weintraub asserts that Benckini has failed to adequately plead a conspiracy claim. (*Id*.) Finally, according to Weintraub, the § 1983 claims must fail because Benckini has not put forward a constitutional claim. (*Id*. at 9-10.) The Court agrees that all of Weintraub's conduct in this litigation is protected by absolute prosecutorial immunity. Because this immunity comprehensively disposes of Plaintiff's allegations against Weintraub, the Court will only address Weintraub's first argument.

Benckini accuses Weintraub of withholding evidence and conspiring with Judge Ford to subvert the judicial process and prevent Benckini from receiving a fair trial. All of the nefarious acts that Benckini attributes to Weintraub, however, are clearly within the scope of Weintraub's duties in initiating and pursuing a criminal prosecution. The Supreme Court has held that state prosecutors are immune from civil suits seeking damages under § 1983 for acts committed in initiating and presenting the State's case. *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). In *Imbler*, the Court declined to grant merely qualified immunity to state prosecutors.[1] *Id*. at 424. Even the threat of lawsuits seeking civil damages against state prosecutors, in the Court's analysis, would undermine their performance and effectiveness. *Id*. First, if every action taken in furtherance of a prosecutor's duties left open the possibility of a lawsuit, that prosecutor could not focus on the enforcement of the criminal law. *Id*. at 425. Second, the prospect of forcing prosecutors, who often operate under time constraints and limited information, to answer for long-past actions arising amid a myriad of indictments and trials would place an intolerable burden upon them. *Id*. at 425-26. In sum, the

[1] Absolute immunity defeats a lawsuit from its inception, while qualified immunity requires an examination of the circumstances and motivations surrounding a defendant's actions, which often must be adduced at trial. *See Imbler*, 424 U.S. at 419 n.13 (citations omitted).

Supreme Court was simply unwilling to limit the discretion afforded to prosecutors in conducting a trial and presenting evidence. *Id*. at 426.

The law is thus clear that, provided Weintraub was acting within the scope of his duties as a prosecutor, he is immune from liability. *See id*. at 430. The acts alleged against Weintraub – withholding evidence; presenting secret closing arguments; putting witnesses on the stand who Weintraub knew would commit perjury; conspiring with a judge to prevent a fair trial; and prosecuting a case out of spite, all clearly arose in the course of the Commonwealth's prosecution of Benckini. Weintraub therefore is absolutely immune from suit for these actions, even accepting Benckini's allegations as true. *See Barnes v. City of Coatesville*, Civ. A. No. 93-1444, 1993 WL 259329, at *8 (E.D. Pa. June 28, 1993) (noting that prosecutors enjoy absolute immunity "from civil liability for activities associated with the criminal justice process, including initiating a prosecution and presenting the state's case"). First, Weintraub's decision to prosecute falls within the protections set forth in *Imbler*. *Burgoon v. Township of Exeter*, Civ. A. No. 90-4781, 1990 WL 158323, at *2 (E.D. Pa. Oct. 15, 1990) (*citing Wilkinson v. Ellis*, 484 F. Supp. 1072, 1081 (E.D. Pa. 1980)); *see also Panayotides v. Rabenold*, 35 F. Supp. 2d 411, 416 (E.D. Pa. 1999) (*citing Davis v. Rendell*, 659 F.2d 374, 378 (3d Cir. 1981)). Immunity is not lost even when a prosecutor is aware that sufficient probable cause for prosecution is lacking. *Burgoon*, 1990 WL 158323, at *2. Handling evidence, moreover, also falls within a prosecutor's duties of initiating and presenting the State's case. *Id*. (*citing Henderson v. Fisher*, 631 F.2d 1115, 1120 (3d Cir. 1980)). Finally, neither the willful use of perjured testimony nor the willful suppression of exculpatory information would strip Weintraub of absolute immunity. *See Imbler*, 424 U.S. at 431 n.34; *see also Brawer v. Horowitz*, 535 F.2d 830 (3d Cir. 1976) (upholding absolute immunity from lawsuit for money damages for federal prosecutor

alleged to have conspired with witness to use perjured testimony and conceal exculpatory evidence); *Barnes*, 1993 WL 259329, at *8 (applying absolute immunity to reject allegations that prosecutor coerced perjured testimony and withheld evidence).

In sum, all of the activities cited by Benckini revolve around Weintraub's decision to prosecute and Weintraub's handling of the case once that decision was made. The law is clear that Weintraub enjoys absolute immunity for these acts.

2. Judge Ford

Judge Ford argues that he is entitled to absolute judicial immunity. (Def. Ford's Br. in Supp. of Mot. to Dismiss at 2-4.) He also argues that, acting in his official capacity, he is not a "person" under § 1983. (*Id*. at 4-5.) Because the Court agrees that Judge Ford is immune from suit, it is not necessary to address the definition of "person" under § 1983.

Benckini's claims against Judge Ford arise from Judge Ford's admission of Benckini's prior conviction, his ex parte conversations with Weintraub, his inquiry as to why Benckini appealed his sentence, his refusal to allow Benckini to question a witness at Benckini's probation hearing, and his denial of Benckini's motion for work release. (Compl. ¶¶ 2, 5, 9-10.) By these actions, alleges Benckini, Judge Ford formed a conspiracy with Weintraub to deprive him of his rights. (*Id*. ¶ 1.)

The Supreme Court has declared that judges "are not liable in civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Bradley v. Fisher*, 13 Wall. 335, 347 (1872). There can be no doubt that judges enjoy absolute immunity from suits seeking damages for civil rights violations arising from acts performed in their judicial capacities. *Dennis v. Sparks*, 449 U.S. 24, 27 (1980); *see also Figueroa v. Blackburn*, 208 F.3d 435, 440 (3d Cir. 2000) ("It is a well-settled principle of law that

judges are generally 'immune from a suit for money damages.'") (*quoting Mireles v. Waco*, 502 U.S. 9, 9 (1991) (per curiam)). This immunity applies even if the judge acted maliciously or in bad faith. *Byrd v. Parris*, Civ. A. No. 99-769, 1999 WL 895647, at *2 (E.D. Pa. Oct. 15, 1999) (*citing Pierson v. Ray*, 386 U.S. 547, 554 (1967)). A judge is also protected from suit even if the judge's actions resulted from a conspiracy between the judge and other lawyers in the case. *D'Alessandro v. Robinson*, 210 F. Supp. 2d 526, 529 (D. Del. 2002) (collecting cases applying doctrine of judicial immunity and dismissing conspiracy claims against judges).

The broad blanket of judicial immunity can only be overcome in two situations: first, if the judge is acting outside the scope of his judicial capacity; or second, if the judge's actions, though judicial in nature, are taken in the "complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12. Whether an act falls within the scope of judicial action depends upon the "'nature of the act itself, i.e., whether it is a function normally performed by a judge, and [] the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.'" *Id*. at 12 (*quoting Stump v. Sparkman*, 435 U.S. 349, 362 (1978)).

Clearly, Judge Ford did not act in the "complete absence of all jurisdiction." Pennsylvania law grants the courts of common pleas "unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas." 42 PA. CONS. STAT. ANN. § 931(a) (2005). Benckini does not argue that Judge Ford, a Court of Common Pleas judge in Lehigh County, lacked jurisdiction to hear his case or preside over his probation hearing.

It is equally obvious that the nature and function of the acts of which Benckini complains are judicial in nature. Benckini does not allege that Judge Ford acted outside of his judicial capacity;

on the contrary, the very acts which are the subject of this action – admission of evidence, revocation of probation, and summations – are the essence of judging. Furthermore, as a litigant in Judge Ford's court, Benckini was obviously dealing with Judge Ford in his judicial capacity.

Giving credence to the dastardly deeds attributed to Judge Ford and Weintraub would not strip either of them of the long-recognized absolute immunity that accompanies their posts. Accordingly, Benckini's § 1983 claims are dismissed.

B. The Wrongful Death Claim

Moreover, Benckini's claim that his mother died of a broken heart as a result of Defendants' actions is simply not cognizable under Pennsylvania's wrongful death statute. *See* 42 PA. CONS. STAT. ANN. § 8301(a) (1998) (permitting wrongful death action to recover damages for death of an individual caused by wrongful act or neglect or unlawful negligence or violence). The Complaint contains no allegations that even remotely tie the actions of Weintraub or Ford to the unfortunate death of Benckini's mother. Therefore, Benckini's wrongful death claim must be dismissed. *See Sacks v. Creasy*, 211 F. Supp. 859 (E.D. Pa. 1962) (granting motion to dismiss wrongful death suit when allegations stemmed from breach of warranty in failing to provide a proper home for the decedent and to care for and watch over his safety).

III. CONCLUSION

For the reasons set forth above, this Court holds that both Weintraub and Judge Ford are entitled to absolute immunity and that Benckini cannot bring a wrongful death action against them. Therefore, their motions to dismiss are granted. An appropriate Order follows.

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ORDER

AND NOW, this **16th** day of **June**, **2005**, upon consideration of Defendant Matthew D. Weintraub's Motion to Dismiss (Document No. 2) and Defendant Judge William E. Ford's Motion to Dismiss (Document No. 5), and following oral argument on June 15, 2005, it is hereby **ORDERED** that:

1. Both motions are **GRANTED** and both Defendants are **DISMISSED with prejudice**.

2. The Clerk of Court is directed to close this case.

BY THE COURT:

Berle M. Schiller, J.